

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1829

AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-3-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) This article applies to the following:

- (1) The business affairs, physical person, and property of every incapacitated person and minor residing in Indiana.
- (2) Property located in Indiana of every incapacitated person and minor residing outside Indiana.
- (3) Property of every incapacitated person or minor, regardless of where the property is located, coming into the control of a fiduciary who is subject to the laws of Indiana.

(b) Except as provided in subsections ~~(c)~~ (c) through (e), the court has exclusive original jurisdiction over all matters concerning the following:

- (1) Guardians.
- (2) Protective proceedings under IC 29-3-4.

(c) A juvenile court has exclusive original jurisdiction over matters relating to **the following**:

- (1) Minors described in IC 31-30-1-1.
- (2) **Matters related to guardians of the person and guardianships of the person described in IC 31-30-1-1(10).**

(d) Except as provided in subsection (c), courts with child custody jurisdiction under:

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- (1) IC 31-14-10;
- (2) IC 31-17-2-1; or
- (3) IC 31-17-3-3;

have original and continuing jurisdiction over custody matters relating to minors.

(e) A mental health division of a superior court under IC 33-5.1-2 has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

SECTION 2. IC 31-9-2-0.5, AS AMENDED BY P.L.133-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 0.5. (a) "Abandoned infant", for purposes of IC 31-34-21-5.6, means:

(1) a child who is less than twelve (12) months of age and whose parent, guardian, or custodian has knowingly or intentionally left the child in:

- (A) an environment that endangers the child's life or health; or
- (B) a hospital or medical facility;

and has no reasonable plan to assume the care, custody, and control of the child; or

(2) a child who is, or who appears to be, not more than _____ **vj k v{ (52)** days of age and whose parent:

- (A) has knowingly or intentionally left the child with an emergency medical services provider; and
- (B) did not express an intent to return for the child.

(b) "Abandoned infant", for purposes of IC 31-34-21-4 and IC 31-35-2-6.5, means a child who is, or who appears to be, not more than vj k v{ (52) days of age and whose parent:

- (1) has knowingly or intentionally left the child with an emergency medical services provider; and**
- (2) did not express an intent to return for the child.**

SECTION 3. IC 31-30-1-1, AS AMENDED BY P.L.164-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A juvenile court has exclusive original jurisdiction, except as provided in sections 9, 10, 12, and 13 of this chapter, in the following:

- (1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child under IC 31-37.
- (2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under IC 31-34.



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- (3) Proceedings concerning the paternity of a child under IC 31-14.
- (4) Proceedings under the interstate compact on juveniles under IC 31-37-23.
- (5) Proceedings governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child under IC 31-34-16 or IC 31-37-15.
- (6) Proceedings under IC 31-34-4, IC 31-34-5, IC 31-37-5, and IC 31-37-6 governing the detention of a child before a petition has been filed.
- (7) Proceedings to issue a protective order under IC 31-32-13.
- (8) Proceedings in which a child less than sixteen (16) years of age is alleged to have committed an act that would be a misdemeanor traffic offense if committed by an adult.
- (9) Proceedings in which a child is alleged to have committed an act that would be an offense under IC 9-30-5 if committed by an adult.
- (10) **Guardianship of the person proceedings for a child:**
 - (A) who has been adjudicated as a child in need of services;**
 - (B) for whom a juvenile court has approved a permanency plan under IC 31-34-21-7 that provides for the appointment of a guardian of the person; and**
 - (C) who is the subject of a pending child in need of services proceeding under IC 31-34.**
- (11) Other proceedings specified by law.

SECTION 4. IC 31-30-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as provided in subsections (b) and (c), the juvenile court's jurisdiction over a delinquent child or a child in need of services and over the child's parent, guardian, or custodian continues until:

- (1) the child becomes twenty-one (21) years of age, unless the court discharges the child and the child's parent, guardian, or custodian at an earlier time; or
 - (2) guardianship of the child is awarded to the department of correction.
- (b) The juvenile court may, on its own motion, after guardianship of a child is awarded to the department of correction, reinstate the court's jurisdiction for the purpose of ordering the child's parent, guardian, or custodian to participate in programs operated by or through the department of correction.
- (c) The juvenile court's jurisdiction over a parent or guardian of the estate of a child under this section continues until the parent or

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guardian of the estate has satisfied the financial obligation of the parent or guardian of the estate that is imposed under IC 31-40 (or IC 31-6-4-18 before its repeal).

(d) The jurisdiction of the juvenile court over a proceeding described in IC 31-30-1-1(10) for a guardianship of the person continues until the earlier of the date that:

(1) the juvenile court terminates the guardianship of the person; or

(2) the child becomes:

(A) nineteen (19) years of age, if a child who is at least eighteen (18) years of age is a full-time student in a secondary school or the equivalent level of vocational or technical training; or

(B) eighteen (18) years of age, if clause (A) does not apply.

If the guardianship of the person continues after the child becomes the age specified in subdivision (2), the juvenile court shall transfer the guardianship of the person proceedings to a court having probate jurisdiction in the county in which the guardian of the person resides. If the juvenile court has both juvenile and probate jurisdiction, the juvenile court may transfer the guardianship of the person proceedings to the probate docket of the court.

(e) The jurisdiction of the juvenile court to enter, modify, or enforce a support order under IC 31-40-1-5 continues during the time that the court retains jurisdiction over a guardianship of the person proceeding described in IC 31-30-1-1(10).

(f) At any time, a juvenile court may, with the consent of a probate court, transfer to the probate court guardianship of the person proceedings and any related support order initiated in the juvenile court.

SECTION 5. IC 31-34-2.5-1, AS ADDED BY P.L.133-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) An emergency medical services provider shall, without a court order, take custody of a child who is, or who appears to be, not more than ——— **thirty (30)** days of age if:

(1) the child is voluntarily left with the provider by the child's parent; and

(2) the parent does not express an intent to return for the child.

(b) An emergency medical services provider who takes custody of a child under this section shall perform any act necessary to protect the child's physical health or safety.

(c) Any person who in good faith voluntarily leaves a child with an emergency medical services provider is not obligated to disclose

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the parent's name or their name.

SECTION 6. IC 31-34-2.5-2, AS ADDED BY P.L.133-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) Immediately after an emergency medical services provider takes custody of a child under section 1 of this chapter, the provider shall notify the local child protection service that the provider has taken custody of the child.

(b) The local child protection service shall:

- (1) assume the care, control, and custody of the child immediately after receiving notice under subsection (a); **and**
- (2) **not later than forty-eight (48) hours after the local child protection service has taken custody of the child, contact the Indiana clearinghouse for information on missing children established by IC 10-1-7-3 to determine if the child has been reported missing.**

SECTION 7. IC 31-34-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1.5. (a) **This section applies to a child taken into custody under IC 31-34-2.5.**

(b) **The juvenile court shall hold a detention hearing after an emergency medical services provider takes custody of a child under IC 31-34-2.5. The court shall hold the detention hearing not later than forty-eight (48) hours after the emergency medical services provider takes the child into custody, excluding Saturdays, Sundays, and legal holidays.**

(c) **The county office of family and children may notify the emergency medical services provider that has taken emergency custody of a child under IC 31-34-2.5 of the detention hearing. The emergency medical services provider may be heard at the detention hearing.**

SECTION 8. IC 31-34-10-2, AS AMENDED BY P.L.133-2000, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The juvenile court shall hold an initial hearing on each petition.

(b) ~~Subject to section 2.5 of this chapter,~~ The juvenile court shall set a time for the initial hearing. A summons shall be issued for the following:

- (1) The child.
- (2) The child's parent, guardian, custodian, or guardian ad litem.
- (3) Any other person necessary for the proceedings.

(c) A copy of the petition must accompany each summons. The clerk shall issue the summons under Rule 4 of the Indiana Rules of

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Trial Procedure.

SECTION 9. IC 31-34-21-4, AS AMENDED BY P.L.133-2000, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) **Except as provided in subsection (f)**, at least ten (10) days before the periodic case review, including a case review that is a permanency hearing under section 7 of this chapter, the county office of family and children shall send notice of the review to each of the following:

- (1) The child's parent, guardian, or custodian.
- (2) An attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian.**
- ~~(2)~~ **(3)** A prospective adoptive parent named in a petition for adoption of the child filed under IC 31-19-2 if:
 - (A) each consent to adoption of the child that is required under IC 31-19-9-1 has been executed in the form and manner required by IC 31-19-9 and filed with the county office of family and children;
 - (B) the court having jurisdiction in the adoption case has determined under any applicable provision of IC 31-19-9 that consent to adoption is not required from a parent, guardian, or custodian; or
 - (C) a petition to terminate the parent-child relationship between the child and any parent who has not executed a written consent to adoption under IC 31-19-9-2 has been filed under IC 31-35 and is pending.
- ~~(3)~~ **(4)** Any other person who:
 - (A) the county office of family and children has knowledge is currently providing care for the child; and
 - (B) is not required to be licensed under IC 12-17.2 or IC 12-17.4 to provide care for the child.
- ~~(4)~~ **(5)** Any other suitable relative or person who the county office knows has had a significant or caretaking relationship to the child.
- ~~(5)~~ **Any emergency medical services provider who has taken custody of an abandoned infant under IC 31-34-2.5.**

(b) At least ten (10) days before the periodic case review, including a case review that is a permanency hearing under section 7 of this chapter, the county office of family and children shall provide notice of the review to the child's foster parent by:

- (1) certified mail; or
 - (2) face to face contact by the county office of family and children caseworker.
- (c) The court shall provide to a person described in subsection (a)

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or (b) an opportunity to be heard and to make any recommendations to the court in a periodic case review, including a permanency hearing under section 7 of this chapter. The right to be heard and to make recommendations under this subsection includes the right of a person described in subsection (a) or (b) to submit a written statement to the court that, if served upon all parties to the child in need of services proceeding and the persons described in subsections (a) and (b), may be made a part of the court record.

(d) **Except as provided in subsection (f)**, this section does not exempt the county office of family and children from sending a notice of the review to each party to the child in need of services proceeding.

(e) The court shall continue the review if, at the time of the review, the county office of family and children has not provided the court with signed verification from the child's foster parent, as obtained through subsection (b), that the foster parent has been notified of the review at least five (5) business days before the review. However, the court is not required to continue the review if the child's foster parent appears for the review.

(f) If the parent of an abandoned child does not disclose the parent's name as allowed by IC 31-34-2.5-1(c), the parent is not required to be notified of a proceeding described in subsection (a).

SECTION 10. IC 31-34-21-5.6, AS AMENDED BY HEA 1855-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5.6. (a) A court may make a finding described in this section at any phase of a child in need of services proceeding.

(b) Reasonable efforts to reunify a child with the child's parent, guardian, or custodian or preserve a child's family as described in section 5.5 of this chapter are not required if the court finds any of the following:

(1) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:

(A) an offense described in IC 31-35-3-4(1)(B) or IC 31-35-3-4(1)(D) through IC 31-35-3-4(1)(J) against a victim who is:

- (i) a child described in IC 31-35-3-4(2); or
- (ii) a parent of the child; or

(B) a comparable offense as described in clause (A) in any other state, territory, or country by a court of competent jurisdiction.

(2) A parent, guardian, or custodian of a child who is a child in need of services:

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- (A) has been convicted of:
- (i) the murder (IC 35-42-1-1) or voluntary manslaughter (IC 35-42-1-3) of a victim who is a child described in IC 31-35-3-4(2)(B) or a parent of the child; or
 - (ii) a comparable offense described in item (i) in any other state, territory, or country; or
- (B) has been convicted of:
- (i) aiding, inducing, or causing another person;
 - (ii) attempting; or
 - (iii) conspiring with another person;
- to commit an offense described in clause (A).
- (3) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:
- (A) battery (IC 35-42-2-1(a)(5)) as a Class A felony;
 - (B) battery (IC 35-42-2-1 (a)(4)) as a Class B felony;
 - (C) battery (IC 35-42-2-1(a)(3)) as a Class C felony;
 - (D) aggravated battery (IC 35-42-2-1.5);
 - (E) criminal recklessness (IC 35-42-2-2(c)) as a Class C felony;
 - (F) neglect of a dependent (IC 35-46-1-4) as a Class B felony;
- or
- (G) a comparable offense described in clauses (A) through (F) in another state, territory, or country;
- against a child described in IC 31-35-3-4(2)(B).
- (4) The parental rights of a parent with respect to a biological or adoptive sibling of a child who is a child in need of services have been involuntarily terminated by a court under:
- (A) IC 31-35-2 (involuntary termination involving a delinquent child or a child in need of services);
 - (B) IC 31-35-3 (involuntary termination involving an individual convicted of a criminal offense); or
 - (C) any comparable law described in clause (A) or (B) in any other state, territory, or country.
- (5) The child is an abandoned infant, provided that the court:
- (A) has appointed a guardian ad litem or court appointed special advocate for the child; and
 - (B) after receiving a written report and recommendation from the guardian ad litem or court appointed special advocate, and after a hearing, finds that reasonable efforts to locate the child's parents or reunify the child's family would not be in the best interests of the child. ~~However, there is a rebuttable presumption that it is not in the best interests of the child to~~

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locate the child's parent or reunify the child's family if the child was left with an emergency medical services provider who took custody of the child under IC 31-34-2.5.

SECTION 11. IC 31-34-21-7.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 7.7. If the juvenile court approves a permanency plan under section 7 of this chapter that provides for the appointment of a guardian for a child, the juvenile court may appoint a guardian of the person and administer a guardianship for the child under IC 29-3. If a guardianship of the person proceeding for the child is pending in a probate court, the probate court shall transfer the proceeding to the juvenile court.**

SECTION 12. IC 31-35-2-6.5, AS AMENDED BY P.L.133-2000, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6.5.** (a) This section applies to hearings under this chapter relating to a child in need of services.

(b) At least ten (10) days before a hearing on a petition or motion under this chapter:

- (1) the person or entity who filed the petition to terminate the parent-child relationship under section 4 of this chapter; or
- (2) the person or entity who filed a motion to dismiss the petition to terminate the parent-child relationship under section 4.5(d) of this chapter;

shall send notice of the review to the persons listed in subsections (c) and (d).

(c) **Except as provided in subsection (h)**, the following persons shall receive notice of a hearing on a petition or motion filed under this chapter:

- (1) The child's parent, guardian, or custodian.
- (2) **An attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian.**
- (~~2~~) **(3)** A prospective adoptive parent named in a petition for adoption of the child filed under IC 31-19-2 if:
 - (A) each consent to adoption of the child that is required under IC 31-19-9-1 has been executed in the form and manner required by IC 31-19-9 and filed with the county office of family and children;
 - (B) the court having jurisdiction in the adoption case has determined under an applicable provision of IC 31-19-9 that consent to adoption is not required from a parent, guardian, or custodian; or
 - (C) a petition to terminate the parent-child relationship

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between the child and any parent who has not executed a written consent to adoption under IC 31-19-9-2, has been filed under IC 31-35 and is pending.

~~(3)~~ **(4)** Any other person who:

(A) the county office of family and children has knowledge is currently providing care for the child; and

(B) is not required to be licensed under IC 12-17.2 or IC 12-17.4 to provide care for the child.

~~(4)~~ **(5)** Any other suitable relative or person who the county office of family and children knows has had a significant or caretaking relationship to the child.

~~(5) Any emergency medical services provider who has taken custody of an abandoned infant under IC 31-34-2.5.~~

(6) Any other party to the child in need of services proceeding.

(d) At least ten (10) days before a hearing on a petition or motion under this chapter, the county office of family and children shall provide notice of the hearing to the child's foster parent by:

(1) certified mail; or

(2) face to face contact by the county office of family and children caseworker.

(e) The court shall provide to a person described in subsection (c) or (d) an opportunity to be heard and make recommendations to the court at the hearing. The right to be heard and to make recommendations under this subsection includes the right of a person described in subsection (c) or (d) to submit a written statement to the court that, if served upon all parties to the child in need of services proceeding and the persons described in subsections (c) and (d), may be made a part of the court record.

(f) The court shall continue the hearing if, at the time of the hearing, the county office of family and children has not provided the court with signed verification from the foster parent, as obtained through subsection (d), that the foster parent has been notified of the hearing at least five (5) business days before the hearing. However, the court is not required to continue the hearing if the child's foster parent appears for the hearing.

(g) A person described in subsection (c)(2) through ~~(c)(5)~~ **(c)(4)** or subsection (d) does not become a party to a proceeding under this chapter as the result of the person's right to notice and the opportunity to be heard under this section.

(h) If the parent of an abandoned child does not disclose the parent's name as allowed by IC 31-34-2.5-1(c), the parent is not required to be notified of a hearing described in subsection (c).

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SECTION 13. IC 31-37-6-6, AS AMENDED BY P.L.188-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) The juvenile court shall release the child on the child's own recognizance or to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the court at a time specified. However, the court may order the child detained if the court finds probable cause to believe the child is a delinquent child and that:

- (1) the child is unlikely to appear for subsequent proceedings;
- (2) detention is essential to protect the child or the community;
- (3) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child;
- (4) return of the child to the child's home is or would be:**
 - (A) contrary to the best interests and welfare of the child;**
 - and**
 - (B) harmful to the safety or health of the child;** or
- (5) the child has a reasonable basis for requesting that the child not be released.**

However, the findings under this subsection are not required if the child is ordered to be detained in the home of the child's parent, guardian, or custodian or is released subject to any condition listed in subsection ~~(e)~~: **(d)**.

(b) If a child is detained for a reason specified in subsection (a)(3), ~~or (a)(4), or (a)(5)~~, the child shall be detained under IC 31-37-7-1.

(c) If a child is detained for a reason specified in subsection (a)(4), the court shall make written findings and conclusions that include the following:

- (1) The factual basis for the finding specified in subsection (a)(4).**
- (2) A description of the family services available and efforts made to provide family services before removal of the child.**
- (3) The reasons why effort made to provide family services did not prevent removal of the child.**
- (4) Whether efforts made to prevent removal of the child were reasonable.**

(d) Whenever the court releases a child under this section, the court may impose conditions upon the child, including:

- (1) home detention;
- (2) electronic monitoring;
- (3) a curfew restriction;
- (4) a protective order;



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- (5) a no contact order;
- (6) an order to comply with Indiana law; or
- (7) an order placing any other reasonable conditions on the child's actions or behavior.

SECTION 14. IC 33-5-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. **(a) Subject to this section**, the superior courts have the same jurisdiction as the Boone circuit court. ~~except that:~~

- ~~(1) (b) Only the circuit court has juvenile jurisdiction. and~~
- ~~(2) (c) Except as provided in IC 31-30-1-1, only the superior court No. 1 has probate jurisdiction.~~

SECTION 15. IC 33-5-25-5, AS AMENDED BY SEA 138-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) Each superior court in the county has original and concurrent jurisdiction with the circuit court in all civil actions and proceedings at law and in equity, and actions for dissolution or annulment of marriage, and in all criminal cases and proceedings, but none of the superior courts have the jurisdiction of a juvenile court.

(b) Each superior court in the county has original and concurrent jurisdiction with the circuit court in all appeals or reviews from boards of county commissioners or other executive or administrative agencies and all other appellate jurisdiction vested in the circuit court.

SECTION 16. IC 31-34-10-2.5 IS REPEALED [EFFECTIVE JULY 1, 2001].

SECTION 17. [EFFECTIVE JULY 1, 2001] **(a) IC 29-3-2-1, IC 31-30-1-1, IC 31-30-2-1, IC 33-5-9-5, and IC 33-5-25-5, all as amended by this act, and IC 31-34-21-7.7, as added by this act, apply to all proceedings pending under IC 31-34 on July 1, 2001, and to all proceedings commenced under IC 31-34 after June 30, 2001.**

(b) On July 1, 2001, all guardianship of the person matters:

- (1) that are pending in a court other than a juvenile court;**
- and**
- (2) over which a juvenile court has exclusive original jurisdiction under IC 31-30-1-1, as amended by this act;**

shall be transferred to the juvenile court. A matter transferred under this SECTION shall be treated as if it were originally filed in the juvenile court.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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